No. 88-357

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1988

NORM MALENG, King County Prosecuting Attorney; AMOS E. REED, Secretary of the Washington State Department of Social & Health Services; KENNETH O. EIKENBERRY, Attorney General,

Petitioners,

v.

MARK EDWIN COOK,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

JOHN MIDGLEY
Counsel of Record
SMITH, MIDGLEY
& PUMPLIN, P.S.
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Seattle, WA 98104
(206) 682-1948
Counsel for Respondent

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Attorney General
JOHN M. JONES
Assistant Attorney General
WILLIAM L. WILLIAMS
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Senior Assistant Attorney General
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Olympia, WA 98504
(206) 586-1445
Counsel for Petitioners

PETITION FOR WRIT OF CERTIORARI
FILED AUGUST 27, 1988
WRIT OF CERTIORARI GRANTED
NOVEMBER 7, 1988

STATE PRINTING PLANT 3 OLYMPIA, WASHINGTON

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES IN CASE NO. 88-357

1. October 30, 1985 — Respondent Mark Edwin Cook files his Petition for Writ of Habeas Corpus alleging his 1958 robbery conviction was unconstitutional and that it was thereafter used to enhance his 1978 sentences. Docket No. C85-1943D (CR 1).

2. December 11, 1985 — Petitioners file their Motion to Dismiss for lack of jurisdiction and laches (CR 9).

3. January 21, 1986 — Respondent files his "Reply to Response on Petitioner's Memorandum of Authorities Opposing the State's Motion to Dismiss" (CR 17).

4. March 24, 1986 — Magistrate's Report and Recommendation recommends the District Court dismiss Mr. Cook's Petition for lack of subject matter jurisdiction (CR 21).

5. April 4, 1986 — Respondent Cook files his objections to the Magistrate's Report and Recommendation (CR 22).

6. May 19, 1986 — District Court dismisses Mr. Cook's Petition for lack of subject matter jurisdiction (CR 25).

7. June 2, 1986 — Respondent Cook files his Motion for Reconsideration of the Order dismissing his Petition (CR 26).

8. June 19, 1986 — Respondent Cook moves the District Court for a Certificate of Probable Cause to appeal (CR 27).

9. July 16, 1986 — District Court denies Mr. Cook's Motion for Certificate of Probable Cause (CR 31).

10. July 25, 1986 — Respondent Cook moves the Court of Appeals for a Certificate of Probable Cause.

11. September 8, 1986 — Court of Appeals for the Ninth Circuit denies Mr. Cook's Motion without prejudice upon his moving for and being granted an extension of time to file a new Notice of Appeal (CR 34).

12. September 15, 1986 — Respondent Cook moves District Court for an extension of time to file a new notice of appeal and files a new Notice of Appeal (CR 36).

13. September 15, 1986 — District Court grants Respondent Cook's Motion for Extention of Time to File Appeal (CR 38).

14. February 13, 1987 — Court of Appeals for the Ninth Circuit grants Mr. Cook a Certificate of Probable Cause.

15. June 2, 1988 — Court of Appeals for the Ninth Circuit reverses the District Court, finding Mr. Cook was sufficiently "in custody" to confer subject matter jurisdiction and remands for further proceeding. Docket No. 86-4151.

16. August 27, 1988 — Petitioners file their Petition for Writ of Certiorari. Docket No. 88-357.

17. November 7, 1988 — United States Supreme Court grants Writ of Certiorari.

MARK EDWIN COOK'S PETITION FOR WRIT OF HABEAS CORPUS [FILED OCTOBER 30, 1985]

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PETITION UNDER 28 USC § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court	District: Western District of Washington
Name: MARK EDWIN COOK	Prisoner No.: 20025-118(fed) 027800(state)
Place of Confinement: United States Penitentiary Lompoc, California 93436	
Name of Petitioner (include name under which convicted): MARK EDWIN COOK	Name of Respondent (authorized person having custody of petitioner): V. NORM MALENG, King County Prosecuting Attorney, ANNE REED, Secretary of the Washington State Department of Social & Health Services,
The Attorney General of the State of: Washington, KENNETH O. EIKENBERRY	

FILED
LODGED
RECEIVED

SEP 30 1985

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

PETITION

1. Name and location of court which entered the judgment of conviction under attack: Washington State Superior Court for King County at Seattle, Washington

2. Date of judgment of conviction: May 7, 1958

3. Length of sentence: Three 20-year terms running concurrently

4. Nature of offense involved (all counts): Three counts of robbery

5. What was your plea? (Check one)
   (a) Not guilty [X]
   (b) Guilty [ ]
   (c) Nolo contendere [ ]
   If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. Kind of trial: (Check one)
   (a) Jury [X]
   (b) Judge only [ ]

7. Did you testify at the trial?
   Yes [ ] No [ ]

8. Did you appeal from the judgment of conviction?
   Yes [ ] No [X]

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9. If you did appeal, answer the following:

(a) Name of court _____

(b) Result _____

(c) Date of result _____

(d) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?
Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court Court of Appeals of Washington State, Division I

(2) Nature of proceeding Personal Restraint Petition

(3) Grounds raised That the conviction was obtained in violation of due process because the trial court failed to hold a competency hearing after finding there was a reasonable doubt as to my sanity (competency to stand trial).

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result petition denied

(6) Date of result 3/22/84

(b) As to any second petition, application or motion give the same information:

(1) Name of court Supreme Court of the State of Washington

(2) Nature of proceeding Motion for Discretionary Review

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(3) Grounds raised Conviction obtained in violation of due process because the trial court failed to hold a competency hearing after finding there was a reasonable doubt as to my sanity (competency to stand trial)

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result motion denied

(6) Date of result 7/20/84 & 9/21/84

(c) As to any third petition, application or motion, give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(d) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐
(2) Second petition, etc. Yes ☒ No ☐
(3) Third petition, etc. Yes ☐ No ☐

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not.

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may have any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you should raise in this petition all available grounds relating to this conviction on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
(b) Conviction obtained by use of coerced confession.
(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
(e) Conviction obtained by a violation of the privilege against self-incrimination.
(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
(g) Conviction obtained by a violation of the protection against double jeopardy.
(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
(i) Denial of effective assistance of counsel.
(j) Denial of right of appeal.

A. Ground one: Conviction obtained in violation of due process of law where court failed to hold a competency hearing.

Supporting FACTS (tell your story briefly without citing cases or law): Prior to my trial in 1958, the trial judge made a finding that there was a reasonable doubt as to my sanity based upon my history of confinement in mental institutions. He ordered a commission of doctors to examine me and I believe I was examined. Although there was no record of a competency hearing nor a finding of competency of any kind, I was tried and found guilty of all charges. I contend that I was incompetent to stand trial and thus was convicted in violation of due process.

B. Ground two: My Washington State sentence under King County Cause No. 76960 has been unlawfully enhanced on the information of an invalid 1958 conviction.

Supporting FACTS (tell your story briefly without citing cases or law): On January 6, 1976, I was sentenced in the King County Superior Court to two life terms for two counts of first degree assault and a ten year term for one count of aiding a prisoner to escape. Under the Washington State enhancement statutes, it is mandatory that a prisoner who is convicted three times of felony must serve a mandatory term of 15 years before he/she is eligible for parole. A person having two felony convictions must serve a seven and a half year mandatory term before being eligible for parole. Because of the invalid 1958 conviction, I will have to serve twice as much time before I am eligible for parole than I would if the invalid conviction were reversed. I contend that I will be illegally imprisoned if the invalid conviction is not reversed and that this will be a violation of due process.

C. Ground three: My federal sentence under Eastern District of Washington Case No. CR78-047 has been unlawfully enhanced pursuant to an invalid conviction.

Supporting FACTS (tell your story briefly without citing cases or law): On August 9, 1978, I was sentenced in the U.S. District Court to 25 years for aiding a bank robbery, and 5 years for a conspiracy. Under the U.S.Parole Statutes, the Parole Commission is authorized to establish paroling guidelines which are based, in part, on prior felony convictions and commitments. (See 28 C.F.R. 2.20). Because of the invalid conviction(1958), commitment thereon, and the subsequent parole from the commitment, the Parole Commission has calculated that I will have to do the entire sentence term without becoming eligible for parole. I contend that I am being imprisoned illegally because the invalid conviction is being used substantially as a basis for denying me early parole in violation of due process.

D. Ground four: _____

Supporting FACTS (tell your story briefly without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ☐ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: John Allen, Seattle,Wn.(1958 state case); Phil Strohberg, Seattle, Wn.(1976 state case); Ted Schenker, Richland,Wn.(1978 federal case).

(b) At arraignment and plea: John Allen, Seattle,Wn.(1958 state case); John Browne, Seattle, Wn.(1976 federal case); Phil Strohberg, Seattle,Wn.(1976 state case)

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(c) At trial John Allen, Seattle, Wn.(1958 state case); Bob Caissler, Kirkland,Wn.(1976 federal case); Phil Ginsberg, Seattle,Wn.(1976 state case).

(d) At sentencing John Allen, Seattle,Wn.(1958 state case); Bob Caissler, Kirkland,Wn. (1976 federal case); John Browne, Seattle,Wn.(1978 state case).

(e) On appeal Tim Ford, Seattle,Wn.(1976 federal case); Wayne Lieb, Olympia,Wn.(1976 state case).

(f) In any post-conviction proceeding John Midgley, Seattle,Wn.(1984 state Personal Restraint Petition)

(g) On appeal from any adverse ruling in a post-conviction proceeding

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
Yes ☐ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes ☒ No ☐
(a) If so, give name and location of court which imposed sentence to be served in the future: sentence imposed on conviction under attack has expired. I am presently serving federal sentence, I have not begun future state sentence(King County Superior Court, Seattle,Wn.)

(b) Give date and length of the above sentence: Future state sentence is life term to begin after release from federal custody.

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

Sept. 25, 1985
(date)

Mark Edwin Cook
Signature of Petitioner

FILED
LODGED
RECEIVED

SEP 30 1985

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

C85-1943

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

MARK EDWIN COOK,

Defendant.

NO. 7 6 9 6 9

MOTION AND AFFIDAVIT AND ORDER OF DISMISSAL OF THE SUPPLEMENTAL INFORMATION ALLEGING THE DEFENDANT TO BE AN HABITUAL CRIMINAL

COMES NOW Christopher T. Bayley, Prosecuting Attorney for King County, Washington, by and through his deputy, James F. Hoover, and moves the court for an order dismissing the supplemental information alleging the defendant, Mark Edwin Cook, to be an habitual criminal, for the reasons as set forth in the affidavit attached hereto.

CHRISTOPHER T. BAYLEY
Prosecuting Attorney

By JAMES F. HOOVER
Deputy Prosecuting Attorney

STATE OF WASHINGTON)
: ss.
COUNTY OF K I N G)

JAMES F. HOOVER, being first duly sworn on oath, deposes and says:

That he is a deputy prosecuting attorney in and for King County, Washington; that he is familiar with the records and files herein; that the state of Washington filed a supplemental information on 6 October 1976 alleging that the defendant Mark Edwin Cook was an habitual criminal; that proof of this allegation was [illegible] in part upon proof of the defendant's conviction of the robbery, Counts I, II, III

CHRISTOPHER T. BAYLEY
Prosecuting Attorney
W554 King County Courthouse
Seattle, Washington 98104
344-7500

on 7 May 1958 in King County Cause No. 31530; that the court file in King County Cause No. 31530 shows that on 4 March 1958 an order was signed appointing the commission of a physician to examine Mark Edwin Cook, the court finding a reasonable doubt existing as to the sanity of the defendant; subsequent court documents indicate that the defendant was in fact examined; however, no documents exist to indicate that the defendant was found competent to stand trial prior to the trial in which he was convicted; that an investigation of the Office of the King County Prosecuting Attorney shows that no order of competency was filed, no transcript of a competency hearing exists and the entries of the clerk of the court do not show that either a hearing to determine competency was held subsequent to 4 March 1958 or that a finding of competency was made; that for the above facts and reasons your affiant believes that the 7 May 1958 conviction can not be used for the purposes of proving the allegations in the supplemental information; that the supplemental information should be dismissed in the interests of justice; and that the defendant will be sentenced in King County Cause No. 76969 without the enhanced penalty of the habitual criminal statute.

JAMES F. HOOVER

SUBSCRIBED and SWORN to before me this 14th day of November, 1977.

NOTARY PUBLIC in and for the state of Washington, residing at Seattle.

Motion and Affidavit and Order of Dismissal of the Supplemental Information Alleging The Defendant to be an Habitual Criminal -

CHRISTOPHER T. BAYLEY
Prosecuting Attorney
W554 King County Courthouse
Seattle, Washington 98104
344 7550

ORDER

IT APPEARING from the motion and affidavit that the ends of justice do not warrant further proceedings in regards to the supplemental information alleging the defendant to be an habitual criminal; now, therefore,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the supplemental information alleging the defendant to be an habitual criminal, and the same hereby is, dismissed.

DONE IN OPEN COURT this 14th day of November, 1977.

JUDGE

Presented by:

JAMES F. HOOVER
Deputy Prosecuting Attorney

Motion and Affidavit and Order of Dismissal of the Supplemental Information Alleging The Defendant to be an Habitual Criminal - 3

CHRISTOPHER T. BAYLEY
Prosecuting Attorney
W554 King County Courthouse
Seattle, Washington 98104
344 7550

THE SUPREME COURT OF WASHINGTON

In the Matter of the Personal Restraint Petition of

MARK EDWIN COOK,

Petitioner.

NO. 50485-7

RULING DENYING MOTION FOR DISCRETIONARY REVIEW

By this motion, Mark Edwin Cook seeks discretionary review by this court of an order of the Acting Chief Judge of Division One of the Court of Appeals dismissing his personal restraint petition. The only issue remaining in the case at this stage concerns Mr. Cook's challenge to his 1958 King County conviction of three counts of robbery. The Acting Chief Judge characterized this challenge as a claim that Mr. Cook's 1958 conviction "was illegal in that he was incompetent to stand trial resulting in the violation of his constitutional rights." The Acting Chief Judge concluded, however, that Mr. Cook had failed to sustain his burden of showing that the alleged constitutional error worked to his actual and substantial prejudice.

As a preliminary matter, I must note that the King County Prosecutor has evidenced an apparent aversion to discussing whether there was error in connection with the 1958 conviction, whether the alleged error was prejudicial, and even the burden of making either showing. Instead, the prosecutor maintains that Mr. Cook is not under restraint as a result of the 1958 conviction because the maximum 20-year term of imprisonment on that conviction has expired. As Mr. Cook points out, however, this position is highly questionable in light of the actual and potential consequences to him of having the conviction on his record. There appears to be sufficient existing "restraint" within the meaning of RAP 16.4(b) to warrant relief if relief is otherwise

called for. In re Powell, 92 Wn.2d 883, 887-88, 602 P.2d 711 (1979); In re Richardson, 100 Wn.2d 669, 670, 675 P.2d 209 (1983).

Mr. Cook has probably also made an adequate showing of prejudice, assuming for the moment that he has successfully demonstrated that error occurred. This is because the cases which Mr. Cook cites establish both that it is constitutional error to try an incompetent defendant and that a competency hearing is necessary where a reasonable doubt exists about competency.

The serious flaw in Mr. Cook's case is that he has not really claimed, and apparently cannot show, that he was not found competent prior to his 1958 trial. He has only claimed that a referral for a competency evaluation occurred, and that no record now exists to show that a hearing took place and that he was found competent.

As to the unavailability of a record, Mr. Cook's assertion is supported by a pleading filed by the State in a 1977 prosecution against him. In that pleading the State conceded, for purposes of voluntarily dismissing a supplemental information alleging Mr. Cook to be a habitual criminal, that inadequate records existed for the State to demonstrate the validity of the 1958 conviction.

The State's apparent inability in 1977 to prove that a competency hearing took place in 1958 is not, however, conclusive. This is because the State carried the burden in the 1977 proceeding, whereas Mr. Cook carries the burden here. In the context of a personal restraint petition, it is the petitioner who must make a prima facie showing of error. In re Hagler, 97 Wn.2d 818, 650

P.2d 1103 (1982). In my view, Mr. Cook cannot make the requisite showing merely by suggesting a possible error that the State can no longer prove did not occur. This is all Mr. Cook's pleadings, fairly read, contain.

Given this analysis, I cannot conclude that the Acting Chief Judge committed obvious or probable error in dismissing Mr. Cook's personal restraint petition. There is therefore no basis for further review by this court under the standards of RAP 13.5(b). The motion for discretionary review is denied.

DATED at Olympia, Washington this 26th day of July, 1984.

COMMISSIONER

STATE'S MEMORANDUM OF AUTHORITIES IN SUPPORT OF MOTION TO DISMISS PETITION [FILED DECEMBER 11, 1985]

Mag. Sweigert

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARK EDWIN COOK Petitioner vs NORM MALENG, et al., Respondents	NO. C85-1943D MEMORANDUM OF AUTHORITIES IN SUPPORT OF MOTION TO DISMISS

I. BASIS FOR CUSTODY

The petitioner is not in custody as the result of his conviction in King County Cause No. 31530 on May 7, 1958, of three counts of Robbery. Rather, he is in federal custody in Lompoc, California. Petitioner's sentence in King County Cause No. 31530 expired twenty years after it was entered, on May 6, 1978. See Exhibit 1 and Exhibit 2, true and correct copies of Judgment and Sentence and Warrant of Commitment.

II. ARGUMENT

BECAUSE THE PETITIONER IS NOT "IN CUSTODY" THIS COURT LACKS JURISDICTION OVER THE SUBJECT MATTER AND MUST DISMISS HIS PETITION.

28 U.S.C. §2241 which establishes the power of district courts to grant writs of habeas corpus, and 28 U.S.C. §2254 both require that a habeas corpus petitioner be in custody at the time the petition is filed.

MICHAEL P. LYNCH
Assistant Attorney General
Department of Corrections
P.O. Box 9699 FN-61
Olympia, WA 98504
(206) 754-1415

Specifically, 28 U.S.C. §2254(a) states:

> The Supreme Court, a justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States. (emphasis added).

This court would have had jurisdiction over petitioner's petition even if he had been on parole from his 1958 conviction at the time that he filed the petition. See Jones v. Cunningham, 371 U.S. 236, 83 S.Ct. 373 (1963); Carafas v. LaVallee, 391 U.S. 234, 88 S.Ct. 1556 (1968).

However, because petitioner's maximum sentence had expired more than seven years prior to the institution of the instant habeas corpus proceeding, he does not meet the statutory "in custody" requirement.

As noted by the Supreme Court in Carafas v. LaValle, supra, 88 S.Ct. at 1560:

> The federal habeas corpus statute requires that the applicant must be "in custody" when the application for habeas corpus is filed. This is required not only by the repeated references in the statute, [footnote omitted], but also by the history of the great writ.

In short, because petitioner was not in custody at the time that he filed his petition this court lacks subject matter jurisdiction and his petition should be dismissed.

Petitioner's claim that he is suffering "collateral consequences" from his 1958 conviction goes to the question of mootness not jurisdiction. Because this court lacks

subject matter jurisdiction, there is no issue over which to argue a matter of mootness.

III. ARGUMENT

PETITIONER'S PETITION IS BARRED BY THE DOCTRINE OF LACHES.

Even if this court were to find that it did have subject matter jurisdiction over petitioner's sentence, the petition itself would be barred as being a delayed petition under Rule 9 of the Rules Governing §2254 Cases.

Petitioner's conviction was in 1958, and yet he waited 27 years before he raised the issue of competency in the federal court.

Without question the state is severely prejudiced in its ability to respond to the issue raised in petitioner's petition. All that can be discerned from what is left of the state court record is that the trial court appointed a commission of physicians consisting of Dr. Ardis J. Candy and Dr. Jack J. Klein to examine the petitioner to determine the question of sanity. See Exhibit 3. And, that the petitioner was delivered to the King County Hospital for purposes of medical examination on March 7, 1958. See Exhibit 4. And, the petitioner was examined by Drs. Klein and Candy and that the doctors were paid. See Exhibit 5. This is all that the state court record reveals. The state court record does not contain a copy of any report which may have been submitted by Drs. Klein and Candy. See affidavit of counsel.

The respondents have been unable to locate Drs. Klein or Candy and is unaware whether they are still alive. See affidavit of counsel. The King County Prosecuting Attorney has not been able to find its file in this case. See affidavit of counsel. The defense attorney, Mr. Jack R. Allen, has destroyed his file in Mr. Cook's case. See affidavit of counsel. The defense attorney has no recollection of what occurred in 1958 with regard to Mr. Cook's competency.

Neither of the two deputy prosecutors who tried the case have any recollection of competency being at issue in the case. See affidavit of counsel. Finally, the Clerk's Office is unable to locate any court reporter notes and believes it probable that said notes have been destroyed. See affidavit of counsel.

In a nutshell, neither the defense attorney nor the prosecutors can remember what happened with regard to the issue of petitioner's competency and the record which was reduced to microfiche a number of years ago no longer contains copies of any psychiatric reports which would have been submitted by Drs. Klein and Candy, nor does the record reflect what proceedings may have occurred, been waived, or what stipulations may have been entered with regard to the question of competency.

It is impossible for the state to respond to petitioner's contention regarding competency. He was at least aware of this claim in 1977 when the same problems with regard

to the location of the state court record were raised in King County Cause No. 76969. See attached Motion and Affidavit, attached to Petitioner's Brief in Support of Petition for Writ of Habeas Corpus.

Petitioner's inexcusable delay in waiting over 27 years for challenging his conviction in federal court has prejudiced the state and the state respectfully requests that petitioner's habeas corpus petition be denied pursuant to Rule 9(a) of the Rules Governing §2254 Proceedings.

DATED this 10th day of December, 1985.

Respectfully submitted,

MICHAEL P. LYNCH
Assistant Attorney General

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARK EDWIN COOK Petitioner vs NORM MALENG, et al., Respondents	NO. C85-1943D AFFIDAVIT OF MICHAEL P. LYNCH

STATE OF WASHINGTON)
) ss
County of Thurston)

MICHAEL P. LYNCH, being first duly sworn upon oath, deposes and says that:

I.

I, MICHAEL P. LYNCH, am the Assistant Attorney General assigned to represent the respondent in the above-referenced cause. In that capacity I have attempted to locate the state court records, and have contacted numerous individuals with regard to what occurred with regard to petitioner's competency hearing, all to no avail.

II.

I had the King County Prosecuting Attorney's Office send me a complete copy of the state court record, or what is left of it, from the microfiche section of the King County Clerk's Office. That record does not contain a copy of any reports which would have been submitted by Drs. Klein and Candy after they examined the petitioner for competency.

III.

There is no listing for either a Dr. Klein or a Dr.

Candy in the Seattle phone book and the respondent does not know how to locate either of the doctors, if they are still alive.

IV.

The Prosecuting Attorney's Office has advised me that they have been unable to find their file in King County Cause No. 31530. I contacted Superior Court Judge Frank Sullivan who was the lead Deputy Prosecuting Attorney in Mr. Cook's case in 1958, and he told me that he had no recollection of whether competency was even raised as a defense in Mr. Cook's case.

V.

I contacted Washington State District Court Judge Jim Cook, who was the back-up Prosecuting Attorney in the petitioner's case and he does not remember competency being an issue in the case.

VI.

I contacted the petitioner's defense attorney, Mr. Jim R. Allen, who stated to me that he had no recollection of what transpired with regard to a competency issue in the petitioner's 1958 case, he also advised me that he had destroyed Mr. Cook's case file.

VII.

I have also contacted the King County Clerk's Office in an attempt to find out if they have any court reporter notes which would pertain to the petitioner's competency.

They have advised me that they cannot locate any court reporter notes in petitioner's case and that those notes probably have been destroyed.

VIII.

The respondent has been severely prejudiced in its ability to find any information about what occurred with regard to the petitioner's competency claim and is totally unable to respond to this issue, as the result of petitioner's 27 year delay in raising this issue. Memories have failed and state court records have either been lost or destroyed.

FURTHER AFFIANT SAYETH NAUGHT.

MICHAEL P. LYNCH

SUBSCRIBED AND SWORN to before me this 10 day of December, 1985.

Notary Public in and for the State of Washington, residing at Olympia.

No. 1677 - [illegible]

In the Superior Court of the State of Washington
For the County of King

THE STATE OF WASHINGTON, Plaintiff,
vs.
[illegible] COOK, Defendant

No. 31530

JUDGMENT AND SENTENCE

FILED
MAY 7 PM 2 12

The Prosecuting Attorney with the Defendant MARK EDWIN COOK in person and counsel John R. Allen came into Court. The Defendant was duly informed by the Court of the nature of the information filed against him for the crime of ROBBERY, COUNTS I, II and III - COUNT I committed on or about the 15th day of October, 1957, COUNT II on or about the 4th day of November, 1957 and COUNT III on or about the 13th day of December, 1957, of his arraignment and plea of "Not guilty to the offense charged in the information," of his trial and the verdict of the jury on the 15th day of April, 1958, "guilty of ROBBERY, COUNTS I, II and III as charged in the information herein"

The Defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, to which he replied he had none.

And no sufficient cause being shown or appearing to the Court, the Court renders its judgment: That whereas the said Defendant having been duly convicted under on the 15th day of April, 1958 in the Superior Court of the crime of ROBBERY, COUNTS I, II and III

It is therefore ORDERED, ADJUDGED AND DECREED that the said Defendant is guilty of the crime of ROBBERY, under COUNTS I, II and III

and that he be confined in the REFORMATORY of the State of Washington, at McNeil Island, for a period not to exceed FIFTEEN YEARS on COUNT I, TWENTY YEARS on COUNT II and TWENTY YEARS on COUNT III and a minimum term to be fixed by the BOARD OF PRISON TERMS AND PAROLES.

Said sentences on COUNTS I, II and III to run concurrently

The Defendant is hereby remanded to the custody of the Sheriff of said County to be by him detained until delivered into the custody of the proper officers for transportation to the said REFORMATORY.

Done in open Court this 7th day of May, 19 58

Judge

Presented by:
Francis L. Sullivan
Deputy Prosecuting Attorney

EXHIBIT 1

In the Superior Court of the State of Washington
For the County of King

17696

THE STATE OF WASHINGTON, Plaintiff,

vs.

Mark Edwin Cook, Defendant.

No. 31530

WARRANT OF COMMITMENT

TO REFORMATORY

OFFICE OF THE COUNTY CLERK OF KING COUNTY,
State of Washington.

I, NORMAN R. RIDDELL, County Clerk of King County, and ex-officio Clerk of the Superior Court of the State of Washington for the County of King, do hereby certify the foregoing to be full, true and correct copy of the Judgment and Sentence duly made by the Hon. Malcolm Douglas Judge of said Court on the 7th day of May, 1958, in the above entitled action, now on record in my office

ATTEST, my hand and the seal of said Superior Court this 10th day of June A. D. 1958

NORMAN R. RIDDELL, County Clerk

By ..... Deputy

THE STATE OF WASHINGTON to the SHERIFF of King County and the Superintendent and Officers in charge of the REFORMATORY of the State of Washington, GREETING:

WHEREAS, Mark Edwin Cook has been duly convicted in the Superior Court of the State of Washington, for the County of King, of the crime of Robbery under Counts I, II and III

and judgment has been pronounced against him that he be punished by imprisonment in the REFORMATORY of the State of Washington at Monroe, for a maximum term of not more than twenty years on Count I eight years on Count II and twenty years on Count III and a minimum term to be fixed by the BOARD OF PRISON TERMS AND PAROLES, said sentences on Counts I, II, and III to run concurrently

All of which appears to us of record; a certified copy of said judgment being endorsed hereon and made a part hereof

NOW, THIS IS TO COMMAND YOU, the said Sheriff, to detain the said Mark Edwin Cook until called for by the officer or officers authorized to conduct him to the State REFORMATORY, and this is to command you, the said Superintendent and Officers in charge of said REFORMATORY to receive of and from the said officer or officers the said Mark Edwin Cook, convicted and sentenced as aforesaid, and the said, keep and confine at said REFORMATORY of the State of Washington for a maximum term of not more than 20 years, on Count I; 20 years on Count II; and 20 years on Count III, said sentences to run concurrently and a minimum term to be fixed by the BOARD OF PRISON TERMS AND PAROLES.

And these presents shall be authority for the same. HEREIN FAIL NOT.

WITNESS, Hon. Malcolm Douglas Judge of the said Superior Court and the seal thereof this 10th day of June A. D. 19 58

NORMAN R. RIDDELL, County Clerk

By ..... Deputy

EXHIBIT 2

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,
Plaintiff.
vs.
MARK EDWIN COOK,
Defendant.

NO. 31530
ORDER APPOINTING COMMISSION OF PHYSICIANS.

This cause coming on [illegible] hearing in open Court on the motion of John R. Allen, the court-appointed attorney for Mark Edwin Cook in the above-entitled cause, asking that a commission be appointed for the purpose of determining the sanity of the defendant, Mark Edwin Cook, it appearing that said defendant is without sufficient means to meet the costs of such an examination, and it appearing that reasonable doubts exist as to the sanity of the said defendant,

It is now Ordered that a Commission of Physicians consisting of Dr. [illegible] ARDIS L. CAREY and Dr. JACK J. KLEIN is hereby appointed for the purpose of examining the defendant Mark Edwin Cook, to determine the question of the sanity of the said Mark Edwin Cook.

Done in Open Court this [illegible] day of March, 1958.

Presented by:

John R. Allen
Attorney for Defendant

Notice of Presentation waived:

[illegible]
Attorney.

EXHIBIT 3

IN THE SUPERIOR COURT OF THE [redacted] FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

MARK EDWIN COOK,

Defendant.

[redacted]

This cause coming on [redacted] hearing in open court on the oral motion of John R. Allen, the court-appointed attorney for Mark Edwin Cook in the above-entitled cause, asking that the Defendant, Mark Edwin Cook be delivered to the King County Hospital for purposes of a medical examination, and it appearing that an order appointing Commission of Physicians has been previously entered in this cause,

NOW, THEREFORE IT IS HEREBY ORDERED, that the defendant Mark Edwin Cook be delivered to the King County Hospital on the 7th day of March, 1958, at the hour of 9:00 A.M., for the purposes of a medical examination, and that upon completion of such examination, that the said defendant be returned to the King County Jail.

Done in Open Court this 6th day of March, 1958.

Judge

PRESENTED BY:

Attorney for Defendant

NOTICE OF PRESENTATION WAIVED:

Prosecuting Attorney for King County

Attorney for Plaintiff

EXHIBIT 4

IN THE SUPERIOR COURT OF THE [redacted] WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

MARK EDWIN COOK,

Defendant.

[redacted]

THIS MATTER having [redacted] the above-entitled [redacted] oral motion of the Prosecuting Attorney for King [redacted] and through his deputy James R. Cook for an order [redacted] the payment of costs of the psychiatric examinations of Mark Edwin Cook; and it appearing that Jack J. Klein, M.D. and Ardis J. Candy, M. D. were appointed by the court for examination of said Mark Edwin Cook and that said physicians did examine the said Mark Edwin Cook; and it appearing that said physicians are engaged in the practice of medicine and entitled to a reasonable fee for their services in connection with said examinations; and that $25.00 is a reasonable sum for each physician for such services;

NOW THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Clerk of this court pay to Jack K. Klein, M.D. and Ardis J. Candy, M.D. out of the Witness Fees, Criminal, the sum of $25.00 each.

DONE IN OPEN COURT this [redacted] day of April, 1958.

15

Judge

Presented by:

Deputy Prosecuting Attorney

Klein paid by cash #

Candy paid by cash #

EXHIBIT 5

MARK EDWIN COOK'S MEMORANDUM OPPOSING STATE'S MOTION TO DISMISS [FILED DECEMBER 27, 1985]

Magistrate Sweigert

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF WASHINGTON

MARK EDWIN COOK, Petitioner, vs. NORM MALENG, et al., Respondents.	No. C85 - 1943D MEMORANDUM OF AUTHORITIES IN SUPPORT OF MOTION OPPOSING STATE'S MOTION TO DISMISS

I. HIS COURT HAS JURISDICTION OVER THE SUBJECT MATTER BECAUSE THE PETITIONER IS "IN CUSTODY" TO SATISFY THE REQUIREMENTS OF 28 U.S.C. SEC. 2254, AND HIS PETITION SHOULD NOT BE DISMISSED FOR LACK OF CUSTODY.

Respondent's claim that petitioner is not "in custody" within the meaning of 28 U.S.C. Sec. 2254 is just not true. Petitioner is a federal prisoner who was sentenced in a Washington State case under King County Cause No. 76969 in January, 1978. See Petition, Ground Two. While in federal custody, the state placed a detainer against petitioner requesting that the government advise it when he will be released so the state can pick him up to begin serving his 1978 sentence.

The Ninth Circuit in Rose v. Morris, 619 F 2d 42(9th Cir.1980) holds that:

> ...a detainer in the form of a communication from the Washington State Board of Prison Terms and Paroles requesting that it be notified before Rose was to be released from federal custody so that it could retake Rose and require him to begin serving the balance of his sentences (C.T.69), is sufficient "custody" to allow a habeas corpus action.

619 F 2d at 44.

Further, the Rose Court citing Peyton v. Rowe, 391 US 54, 88 S Ct 1549, 20 L Ed 2d 426(1969), follows the holding:

> ...that a prisoner may challenge a future sentence that he is not yet serving. (391 US at 67)

Since that holding, the Supreme Court has emphasized that "habeas corpus relief is not limited to immediate release from illegal custody, but that the writ is available as well to attack future confinement and obtain future releases." Preiser v. Rodriguez, 411 US 475,487, 93 S Ct 1827,1835, 36 L ed 2d 439(1973). See Petitioner's Brief in Support of Petition for a Writ of Habeas Corpus at 6.

In Petitioner's Petition in this case, he presented three grounds for relief. The state argues only against the first ground. Petitioner does not concede that the state is correct in its argument but merely points out that this Court does have clear jurisdiction, at least, under the second ground.

This Court does have jurisdiction over the subject matter because the petitioner is "in custody" within the meaning of 28 U.S.C. Sec. 2254 as interpreted by the courts and this petition should not be dismissed for lack of jurisdiction.

II. PETITIONER'S PETITION SHOULD NOT BE BARRED BY THE DOCTRINE OF LACHES WHERE HIS TUCKER CLAIM WAS RAISED IN THE 1976 STATE COURT PROCEEDINGS.

Petitioner was found guilty in King County Cause No. 76969 in October, 1976. Shortly thereafter, the state filed a supplemental information alleging the defendant, this petitioner, to be an habitual criminal, relying in part upon proof of petitioner's 1958 conviction. Petitioner defended himself from the allegation by raising a Tucker Claim in regards to the 1958 conviction. In United States v. Tucker,404 US 443, 92 S Ct 509, 30 L Ed 2d 592(1972), the

Supreme Court held that invalid convictions may not be used to enhance a sentence imposed on a subsequent conviction. Also see Farrow v. United States, 580 F. 2d 1339(9th Cir.1978). After a thorough examination of the state court record on the 1958 conviction, the state conceded to petitioner's Tucker Claim and moved for dismissal of its supplemental information. The motion was granted by the state court. The state had ample opportunity to examine the record at that time and cannot logically expect something favorable to the state to have been lost between that time and the present. Further, the Court in Massachussetts v. Sheppard, ___US___, 104 S Ct 3424, 82 L Ed 2d 737(1984) holds:

> ...the determinations of a judge acting within his jurisdiction, even if erroneous, are valid and binding until they are set aside under some recognized procedure. (cites omitted)

82 L Ed 2d at 744.

Petitioner submits that the state court's order dismissing the supplemental information should have some res judicata effect on the issue of his Tucker Claim and the doctrine of laches should not apply in this case.

Further, some of the delay alluded to by the state occurred due to the inevitable delay in state court proceedings and the requirement that he exhaust his state court remedies before filing in the federal court. Such delay has been found to be excusable. Carafas v. LaVallee, 391 US 234, 88 S Ct 1556, 20 L Ed 2d 554(1968) at 559-560.

Actually, the state suffers no prejudice because it has conceded to the issue of the illegality of the 1958 conviction in the 1977 state court proceedings. Petitioner therefore submits that his petition should not be barred by

the doctrine of laches where his Tucker Claim was raised in the 1976 state court proceedings.

CONCLUSION

Petitioner's petition should not be either dismissed nor denied for lack of jurisdiction or for inexcusable delay on the part of the petitioner.

Dated: December 24, 1985.

Respectfully submitted,

MARK EDWIN COOK, petitioner pro se
Reg. No. 20025-148(K)
3901 - Klein Boulevard
Lompoc, California 93438

STATE'S RESPONSE TO MR. COOK'S MEMORANDUM OPPOSING STATE'S MOTION TO DISMISS [FILED JANUARY 8, 1986]

MAG. SWEIGERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARK EDWIN COOK Petitioner vs NORM MALENG, et al., Respondents	NO. C85-1943D RESPONSE TO PETITIONER'S MEMORANDUM OF AUTHORITIES OPPOSING THE STATE'S MOTION TO DISMISS

Petitioner Cook artfully argues that he is "in custody" for purposes of federal habeas corpus jurisdiction because he has a detainer placed upon him, while he is in federal custody, as the result of his conviction in King County Cause No. 76969. See pages 1 through 2 of Petitioner's Memorandum of Authorities in Support of Motion Opposing State's Motion to Dismiss. The respondents admit that petitioner is in custody for purposes of federal habeas corpus jurisdiction to challenge his conviction in King County Cause No. 76969. See Exhibit 1, copy of Judgment and Sentence. Further, petitioner is also in custody as the result of his conviction in King County Cause No. 42468, see Exhibit 2, because the Parole Board has suspended his parole on that cause, and part of the detainer placed upon petitioner Cook is a parole detainer.

MICHAEL P. LYNCH
Assistant Attorney General
Department of Corrections
P.O. Box 9699 FN-61
Olympia, WA 98504
(206) 754-1415

However, this changes nothing with regard to petitioner's status with regard to King County Cause No. 31530, the conviction which he is challenging in the case at bar. Petitioner's parole has not been suspended on this cause and in fact the maximum expiration date passed prior to the initiation of petitioner's suit.

Therefore, the respondents would submit to this court that petitioner does not meet the jurisdictional prerequisite of being "in custody" at the time he filed his petition challenging King County Cause No. 31530.

DATED this 27th day of January, 1986.

Respectfully submitted,

MICHAEL P. LYNCH
Assistant Attorney General

S. F. No. 9028A —05—4-67

In the County of King

Board

THE STATE OF WASHINGTON, Plaintiff,

vs.

MARK EDWIN COOK, Defendant.

No. 76969

Judgment and Sentence

The Prosecuting Attorney with the defendant MARK EDWIN COOK and counsel John H. Browne came into Court. The defendant was duly informed by the Court of the nature of the information found against him for the crime of ASSAULT IN THE FIRST DEGREE, COUNTS I AND II (WHILE ARMED WITH A DEADLY WEAPON, TO-WIT: A GUN, AS TO EACH COUNT); AIDING PRISONER TO ESCAPE, COUNT III

~~arraigned on or about the ... day of ...~~, of his arraignment and plea of "Not guilty of the offense charged in the information," of his trial and the verdict of the jury on the 1st day of October, 1976, "guilty of all three counts, with a special verdict as to Counts I and II: "Armed with a deadly weapon, and a firearm pursuant to RCW 9.95.040 and RCW 9.41.025".

The defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, to which he replied he had none.

And no sufficient cause being shown or appearing to the Court, the Court renders its judgment:

That whereas the said defendant having been duly convicted by the jury in this Court of the crime of ASSAULT IN THE FIRST DEGREE, COUNTS I AND II (WHILE ARMED WITH A DEADLY WEAPON AND A FIREARM); AIDING PRISONER TO ESCAPE, COUNT III

It is therefore ORDERED, ADJUDGED and DECREED that the said defendant is guilty of the crime of ASSAULT IN THE FIRST DEGREE, COUNTS I AND II, RCW 9.11.020 (WHILE ARMED WITH A DEADLY WEAPON PURSUANT TO RCW 9.95.040 AND A FIREARM PURSUANT TO RCW 9.41.025); AIDING PRISONER TO ESCAPE, COUNT III, RCW 9.31.020

and that he be sentenced to imprisonment in such penal institution or correction facility, under the jurisdiction and supervision of the Department of Social and Health Services, Division of Institutions, as the Secretary of the Department of Social and Health Services shall deem appropriate pursuant to the provisions of RCW 72.13.120, for a maximum term of not more than Life on Counts I & II, 10 years on Count III — concurrently on I & II, III consecutive years, and a minimum term to be fixed by the Board of Prison Terms and Paroles. Ct I & II &

The defendant is hereby remanded to the custody of the Sheriff of King County to be by him detained until called for by the transportation officers of the Department of Social and Health Services, Division of Institutions, authorized to conduct him to the Washington Corrections Center.

DONE IN OPEN COURT this 6th day of January, 1978

Judge

Presented by:

Deputy Prosecuting Attorney

EXHIBIT 1

For the County of King

THE STATE OF WASHINGTON, Plaintiff,

vs.

MARK EDWIN COOK, Defendant

No. 42469

Judgment and Sentence

The Prosecuting Attorney with the defendant MARK EDWIN COOK and counsel AUGUST F. HAHN came into Court. The defendant was duly informed by the Court of the nature of the information found against him for the crime of ROBBERY, COUNTS I, II & III, Count I committed on or about the 23rd day of February, 1965; COUNT II on or about the 25th day of March, 1965 and COUNT III committed on or about the 26th day of March, 1965, of his arraignment and plea of "Not guilty of the offense charged in the information," of his trial and the verdict of the jury on the 15th day of September, 1965, "guilty of ROBBERY as charged in COUNTS I, II and III each

The defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, to which he replied he had none.

And no sufficient cause being shown or appearing to the Court, the Court renders its judgment: That whereas the said defendant having been duly convicted in this Court of the crime of ROBBERY as charged in COUNTS I, II and III

It is therefore ORDERED, ADJUDGED and DECREED that the said defendant is guilty of the crime of ROBBERY as charged in COUNTS I, II and III

and that he be sentenced to imprisonment in such penal institution or correctional facility, under the jurisdiction and supervision of the Department of Institutions, as the Director of Institutions shall deem appropriate pursuant to the provisions of RCW 72.13.120, for a maximum term of not more than forty years, said sentences to run concurrently

years, and a minimum term to be fixed by the Board of Prisons Term and Paroles.

The defendant is hereby remanded to the custody of the Sheriff of King County to be by him detained until called for by the transportation officers of the Department of Institutions authorized to conduct him to the Washington Corrections Center.

DONE IN OPEN COURT this 24th day of September, 19 65.

Judge

Presented by:

Deputy Prosecuting Attorney

Certified copies of Judgment and Sentence, notice of appeal, Appearance Docket entries sent to Clerk of Supreme Court October 23, 1965

EXHIBIT 2

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Office of Probation and Parole

ORDER OF PAROLE SUSPENSION, ARREST, AND DETENTION

TO ALL WHOM THESE PRESENTS SHALL COME,

WHEREAS, Mark Edwin Cook 027100, having been convicted of a felony and sentenced to a term of confinement and committed to the Department of Social and Health Services by the Superior Court of the State of Washington for King County, on the 24th day of September, 19 65, which sentence has not expired, and said person having thereafter been granted parole on the 14th day of September 19 71, and;

WHEREAS, it now appears that said parolee has breached a condition or conditions under which he was granted parole or has violated the law of the State, or the rules and regulations of the Board

WARRANT

NOW, THEREFORE, the undersigned Washington State Probation and Parole Officer, pursuant to the authority vested by the provisions of RCW 9.95.120 and RCW 72.04A.090, does hereby suspend the parole of said parolee and orders said parolee to be confined and detained in jail or appropriate custodial facility pending determination by the Board of Prison Terms and Paroles. The said parolee will not be released from custody on bail or personal recognizance, except on the approval of the Board of Prison Terms and Paroles and the issuance by the Board of an Order of Reinstatement of Parole on the same or modified conditions of parole.

March 12, 1976
DATE

Linda Jorgenson
WASHINGTON STATE PROBATION AND PAROLE OFFICER

COPY SERVED THIS 12th day of March 19 76

Served By Linda Jorgenson
Position Parole Officer

Received By Refused to sign
Date Received 3-12-76

DSHS 9-125 (X) (12-72)

EXHIBIT 3